SUPREME COURT, U. S.

FILED

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MICHAEL RODAK, JR., CLERK

No. 73-395

In the Supreme Court of the United States

OCTOBER TERM, 1973

YUEN SANG LOW, ET AL., PETITIONERS

v.

ROBERT H. BORK, ACTING ATTORNEY GENERAL, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

MEMORANDUM FOR THE RESPONDENTS IN OPPOSITION

ROBERT H. BORK,
Solicitor General,
Department of Justice,
Washington, D.C. 20530.

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Each petitioner is a native and citizen of China who sought entry into the United States in 1951 or 1952 claiming to be the son of an American citizen. Each was denied admission, following a finding that he had not established citizenship, and each was ordered exluded. However, while proceedings were pending, each petitioner was paroled into the United States pursuant to Section 212 (d)(5) of the Immigration and Nationality Act (8 U.S.C. 1182(d)(5)).

Thereafter, petitioners submitted applications for suspension of deportation and adjustment of status to that of a permanent resident alien under the provisions

of Section 244(a) of the Act (8 U.S.C. 1254(a)).[1] The District Director of the Immigration and Naturalization Service rejected the applications on the ground that excluded aliens were ineligible for the relief afforded by that section. Petitioners sought review of that administrative decision in the United States District Court for the Northern District of California. The district court granted petitioners' motion for summary judgment, finding that they had been physically present in this country for the prescribed period and were thus eligible for relief under Section 244(a) (Pet. App. A).

On May 30, 1973, the court of appeals reversed in a comprehensive opinion (Pet. App. B). The petition for certiorari was not filed until August 30, 1973, more than ninety days after the decision of the court below, and no extension of time for petitioning was obtained. The petition is therefore jurisdictionally out of time under 28 U.S.C. 2101(c) and accordingly should be denied. *Teague, et al.* v. *Regional Commissioner of Customs, Region II, et al.*, 394 U.S. 977; *Scofield* v. *National Labor Relations Board*, 394 U.S. 423, 427.

Respectfully submitted.

ROBERT H. BORK,
Solicitor General.

OCTOBER 1973.

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[1]Section 244(a) provides in pertinent part:

> * * * [T]he Attorney General may, in his discretion, suspend deportation and adjust the status to that of an alien lawfully admitted for permanent residence, in the case of an alien who applies to the Attorney General for suspension of deportation and—
>
> (1) is deportable under any law of the United States * * * has been physically present in the United States for a continuous period of not less than seven years immediately preceding the date of such application * * *.